

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CALVIN MILLER, a.k.a. JOHN MILLER, :
Petitioner, : 10 Civ. 3687 (LAP) (MHD)
v. : ORDER ADOPTING REPORT &
: RECOMMENDATION
CALVIN RABSATT, :
: Respondent. :
: X

LORETTA A. PRESKA, Chief United States District Judge:

CALVIN MILLER, a.k.a. JOHN MILLER ("Petitioner"), pro
se, under 28 U.S.C. § 2254, seeks a writ of habeas corpus to
challenge his 2002 conviction in New York State Supreme Court,
Bronx County, for single counts of attempted assault in the
first degree and criminal possession of a weapon in the first
degree, two counts of reckless endangerment in the first degree,
and one count of criminal possession of stolen property in the
fifth degree. (See Report and Recommendation, dated Jan. 8,
2014 [dkt. no. 24] ("Report and Recommendation"), 1.) The court
sentenced Petitioner to concurrent determinate prison terms of
twelve years each for attempted assault and weapons possession,
seven years for reckless endangerment, and one year for
possession of stolen property. (Id.) Petitioner filed his
habeas petition in this court on January 29, 2010. (Petition

for Writ of Habeas Corpus, dated Jan. 29, 2010 [dkt. no. 1]..)

He presses no fewer than nine grounds for relief. (See Report and Recommendation at 9-10.)

On January 8, 2014, Magistrate Judge Dolinger issued a Report and Recommendation concluding that the writ be denied and the Petition dismissed with prejudice because Petitioner's claim is moot and time-barred besides. (See Report and Recommendation at 20.) The court's determination of mootness owes to the fact that Petitioner has been removed from the United States for a separate prior conviction not subject to the habeas action and is barred from reentering this country. Bronx County Assistant District Attorney Nancy D. Killian confirmed that Petitioner was deported on September 26, 2013. (Supplemental Declaration of Nancy D. Killian, dated Nov. 15, 2013 [dkt. no. 22], ¶ 3.)

"[B]ecause [Petitioner] is permanently inadmissible to this country due to his prior drug conviction, collateral consequences cannot arise from the challenged robbery conviction, and the petition is moot." (Report and Recommendation at 16 (quoting Perez v. Greiner, 296 F.3d 123, 126 (2d Cir. 2002))).

Having received no objections and finding Judge Dolinger's decision to be correct and appropriate upon de novo review, see Fed. R. Civ. P. 72(b), his Report and Recommendation is hereby ADOPTED.

SO ORDERED.

DATED: New York, New York
January 6, 2015


LORETTA A. PRESKA
Chief U.S. District Judge